IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.MC.No. 4053 of 2003()

SC.33/2000 of ASSISTANT SESSIONS COURT, PALAKKAD

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PETITIONER: 4TH ACCUSED

SURENDRAN M.K., S/O. KUNCHU, MADAMBIKAD,
VALAYAPARAMBU, MANJAPRA, KANNAMBRA.

BY ADV. SRI.P.K.ASHOKAN
SMT.S.JEEJABAI

RESPONDENTS: COMPLAINANT

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

2. GANGADHARAN S/O.VELAYUDHAN,
PADINJAREMURI, KARAPPATTA, KANNAMBRA, ALATHUR,
PALAKKAD.

3. VASUDEVAN @ VASU, S/O. KESAVA,
ATHANIPARAMBU, KARAPPATTA, KANNAMBRA.

4. MOHANDAS @ MOHAN, S/O. RAMANKUTTY,
KATIRIVEEDU, KARAPPATTA, KANNAMBRA.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR,J.

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CRL.M.C. No. 4053 of 2003

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Dated, this the 3rd day of August 2007

O R D E R

In this revision filed under Sec. 482 Cr.P.C. the petitioner seeks to quash Annexure C order dated 5-4-2003 passed by the Sessions Court, Palakkad in S.C. 33 of 2000 arraigning the petitioner as the 4th accused in the above case in exercise of the power under Sec. 319 Cr.P.C.

2. Sri.P.K. Ashokan, the learned counsel appearing for the petitioner made the following submissions in support of the revision:-

Eventhough the first information report in the case had shown four accused persons including the petitioner, the investigating officer had charge-sheeted only three accused persons and the name of the petitioner was deleted from the final report. Subsequently, the prosecution evidence was started on 17-1-2003. The prosecution altogether examined 14 witnesses as P.Ws 1 to 14 and got marked 13 documents as Exts. 1 to 13 and three material objects as MOs 1 to 3. After the close of the prosecution evidence the accused were questioned under Section 313 (1)(b) Cr.P.C. The learned Addl. Sessions Judge had thereafter heard arguments on either side and had posted the case for judgment. It was at this stage that the Addl. Public Prosecutor who was in-charge of the prosecution filed a report under Sec. 319 Cr.P.C. seeking to array the revision petitioner as the 4th accused in the case. In

Michael Machado and Another v. Central Bureau of Investigation and Another - 2000 (3) SCC 262 the Apex Court has observed as follows:-

> *"But even then, what is conferred on the court is only a discretion as could be discerned from the words "the court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons".*

Just because there is a discretion vested in the court to exercise power under Sec. 319 Cr.P.C. it should not be exercised regardless of the stage of the case particularly in a case as the present where the entire trial was virtually over and what remained was only the pronouncement of the judgment in the case. Again in ***Krishnappa v. State of Karnataka - 2004 (7) SCC 792*** the Apex Court has observed as follows:

> *"The court, while examining an application under Section 319 Cr.P.C., has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, it means that for exercise of discretion under Section 319 Cr.P.C, all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused".*

Thus what has to be borne in mind is that the power under

Section 319 Cr.P.C. should not be mechanically exercised merely on the ground that some evidence had come on record implicating the person sought to be added as the accused in the case. P.W.1 the injured has, not doubt, deposed before court that he was beaten with an iron rod by the petitioner and he had attempted to ward off the blow with his hand and the blow struck his shoulder. But P.Ws 2,4,5, and 6 have not stated those overt acts which were spoken by P.W.1. They have only mentioned the name of the revision petitioner as one among those who had assaulted PW.1. Moreover, the names of P.Ws 2,4,5 and 6 do not figure in the F.I.R. Under these circumstances, the court below, not was justified in exercising the power under Section 319 at the fag end of the trial so as to add the revision petitioner as an accused person. When the precious time and energy of the court have already been arrested and the arraignment of the petitioner will also entail a denovo trial so far as he is concerned.

3. I am afraid that I cannot agree with the above submissions. This is a case in which the name of the revision petitioner figured in the F.I.R. itself. His rank was A1 in the F.I.R. In the F.I. statement given by P.W.1 before the police, he had attributed specific overt acts to the petitioner whose rank was of A1 in the F.I.R. It was after the investigation that his name was deleted by the investigating officer who charge-sheeted only A2 to A4 in the F.I.R. During the stage of trial also P.W.1 had specifically mentioned the overt acts committed by the revision petitioner. According to him also it was a joint

attack by all the four accused persons. It is true that P.Ws 2, 4, 5 and 6 have not mentioned the overt acts which P.W.1 had attributed to the revision petitioner. But all of them had stated that the revision petitioner had also beat P.W.1 along with the rest of the accused. Under Sec. 319 Cr.P.C. if in the course of trial, it appears to the trial court from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused person already facing trial, the court is entitled to proceed against such person for the offence which he appears to have committed. On the evidence before court, it cannot be said that the satisfaction arrived at by the trial court far fetched or inadequate in law. No doubt, it was at the fag end of the trial that the Addl. Public Prosecutor in-charge of the case filed a report the purpose of which was only to remind the court of the need to array the petitioner against whom prima facie there was evidence of having committed offences for which he could be tried along with the accused who already faced trial. I, therefore, do not find any good ground to interfere with the discretion exercised by the trial court .

This petition is accordingly dismissed.

V. Ramkumar, Judge.

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V.RAMKUMAR,J.

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CRL.M.C. No. 4053 of 2003

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Dated, this the 3rd day of August 2007

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